

WETLANDS COUNCIL

MINUTES

September 11, 2018

The Wetlands Council met on Tuesday, September 11, 2018 in Rooms 112, 113, 114
at the Department of Environmental Services, 29 Hazen Drive, Concord, NH

Attendees: Chairman Chip Kimball, Councilors: Lee Carbonneau, Jim Gove, Carol Henderson, Michael Klass, Deborah Lievens, Richard Mellor, Russ St. Pierre, Seth Prescott, Wendy Weisiger, Bob Wolff, and Gretchen Young

Absentee: None

Also present were: Carolyn Guerdet, Council Clerk and Paula Scott, Appeals Clerk

The regular Wetlands Council meeting was called to order by Chairman Kimball 9:02 a.m. with introductions and a quorum present.

1. **Introduction**

2. **Approval of Minutes**

- ***Councilor Henderson made a motion to approve the August 28, 2018 meeting minutes as corrected, second by Councilor Klass. Motion passed unanimously.***

3. **Public Input:** None

4. **Status of Appeals**

Paula Scott reviewed the following:

I. New Appeals

Docket No. 18-11 WtC – Stephen Silk Family Trust Appeal

Subject: 07/10/18 Denial of Wetlands Permit, File #2018-01276

Hearing Officer: Not Assigned

Status: August 6, 2018 received Petition for Appeal. 8/8/18 issued Insufficient Appeal letter. 8/22/18 received Revised Petition for Appeal. 8/24/18 issued Receipt of Revised Appeal letter. Appeal is still insufficient. Council to accept or deny Appeal at today's meeting, (9/11/18).

- ***Councilor Gove made a motion to deny the Appeal, second by Councilor Mellor. Discussion was held. Motion passed unanimously.***

II. Decisions that need to be written/finalized and issued.

Docket No. 17-16 WtC – Bryan and Linda Corr Appeal

Subject: 11/03/17 Administrative Order No. 17-028 WD

Hearing Officer: January 18, 2018 David Conley was appointed by AG

Status: November 30, 2017 received Petition for Appeal and Appearance of John Cronin. December 4, 2017 issued receipt of Appeal letter. 12/29/17 received the Appearance of Joshua Harrison for the Department. Council to accept or deny Appeal at their January 9th meeting. January 10, 2018 issued Appeal accepted letter. 1/25/18 issued Notice of Pre-hearing Conference scheduled for February 14, 2018 at 11 a.m. 2/14/18 issued Pre-hearing Order scheduling hearing for April 10, 2018 at 9 a.m. 2/22/18 received State's Motion to Dismiss. March 14, 2018 received Petitioner's Objection to Motion to Dismiss. 3/22/18 issued Notice of Rescheduled Hearing moving hearing to May 8th at 9 a.m. 3/28/18 received Assented-To Motion to Continue Deadlines. April

2, 2018 issued letter granting Assented-To Motion to Continue Deadlines. 4/11/18 issued Order granting in part and denying in part State's Motion to Dismiss. 4/30/18 received State's Witness and Exhibit List. May 2, 2018 received Appellants' Witness and Exhibit List. 5/8/18 Hearing was held and Deliberations are scheduled for today, June 12, 2018. 5/25/18 received State's Proposed Findings of Fact and Conclusions of Law. 5/29/18 received Appellant's Requests for Finding and Rulings. Deliberations were held June 12, 2018. August 6, 2018 issued Decision and Order granting Petition for Appeal. September 4, 2018 received State's Motion for Reconsideration. 9/10/18 received Objection to State's Motion for Reconsideration.

Docket No. 17-13 WtC – Kelly Connolly, et al Appeal

Subject: 08/28/17 approval of permit #2017-01434 issued to Mark and Teresa Richey
Hearing Officer: February 26, 2018 David Conley was appointed by AG
Status: September 28, 2017 received Notice of Appeal. 9/29/17 issued receipt of Appeal letter. October 5, 2017 received Appearance of Russell Hilliard for the permittees. 10/17/17 received Motion for summary Dismissal. 10/27/17 received Reply and Objection to Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 10/31/17 Reply to Objection for Summary Dismissal and Objection to Provisional Motion to Extend Time for Appeal.. November 6, 2017 received Replication regarding Motion for Summary Dismissal and Provisional Motion to Extend Time for Appeal. 11/15/17 received Further Response to Appellants' Replication. Please note the Appeal appears to be untimely and in correctly addressed therefore, the Council may have to determine whether the Appeal was or was not timely filed. Discussion was January 9, 2018 Council declined to accept Appeal as untimely. 1/12/18 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 1/18/18 received Appellants' Motion for Rehearing and reconsideration. 1/22/18 received Objection to Appellants' Motion for Rehearing and Reconsideration. February 13, 2018 Council granted Motion for Rehearing and Reconsideration. 2/16/18 issued Ruling on Motion for Rehearing and Reconsideration. March 7, 2018 issued Notice of Pre-hearing Conference scheduled for April 2, 2018 at 9 a.m. 3/13/18 received Permittees Motion for Rehearing and Reconsideration. 3/20/18 received Appellants' Objection to Motion for Rehearing and Reconsideration. 3/26/18 received Appellants' Witness and Exhibit Lists. 3/30/18 issued Ruling Denying Permittees' Motion for Rehearing and Reconsideration. April 2, 2018 issued Pre-hearing Order scheduling hearing for August 14, 2018 at 9 a.m. 4/6/18 received Permittees' Witness and Exhibit Lists. 4/30/18 received Appearance of Atty. Brooks. July 16, 2018 received Motion to Exclude Irrelevant and Immaterial Evidence. 7/24/2018 received Appellants' Objection to Motion to Exclude Irrelevant and Immaterial Evidence. August 6, 2018 issued letter granting Objection to Exclude Certain Evidence. 8/14/18 Hearing was held. 8/21/18 received Assented to Stipulation Regarding the Record. Deliberations were held 8/28/18.

III. Hearings or PHCs Pending

Docket No. 17-10 WtC – Patricia A. Rose Appeal

Subject: 06/15/17 approval of Wetlands Permit #2015-03134 issued to Frank and Laurie Leichthammer
Hearing Officer: Not Assigned
Status: July 14, 2017 received Petition for Appeal. 7/17/17 sent Insufficient Appeal letter. August 16, 2017 received Revised Petition for Appeal. 8/17/17 issued Receipt of revised Appeal letter. 8/30/17 received Appearance of Abigail Karoutas and Christopher Wyskiel for permittee and Motion for Summary Dismissal. October 6, 2017 received Response to Motion for Summary Dismissal. Council to accept or deny Appeal at their October 10, 2017 meeting. 10/10/17 Appeal accepted and denied the Motion for Summary Dismissal. 10/11/17 issue ruling accepting Appeal and Denying Motion for Summary Dismissal. 10/25/17 issued Notice of Pre-Hearing Conference scheduled for November 13, 2017 at 9 a.m. 11/7/17 received withdrawal of Abigail Karoutas and Christopher Wyskiel. 1/13/17 issued Pre-hearing Order scheduling Hearing for January 9, 2018 at 9 a.m. 11/20/17 issued Order on permittees' Motion for Summary Dismissal. December 1, 2017 received permittees' response on the Permittees' Response on the Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/11/17 issued Order on Permittees' Response on Permittee's Motion for Summary Dismissal and Request for Summary Judgment. 12/13/17 received Permittee's Witness and Exhibit List. 12/18/17 received Appellant's Witness and Exhibit List. January 9, 2018 received Appearance from Mary Ann Tilton for the Department. Hearing was held on January 9, 2018 and continued until March 13, 2018 at 9 a.m. January 18, 2018 received Appellant's Witness and Exhibit List. Motion to Remand received on 1/23/18. 1/30/18 issued Ruling on Motion to Remand, which was granted. Appeal is stayed and continued hearing scheduled for March 13, 2018 is cancelled. February 8, 2018 received Motion for Reconsideration. February 20, 2018 received Response to Motion for Reconsideration. 2/21/18 issued letter denying Motion for Reconsideration. Appeal is

stayed. Request for status update to be sent. August 14, 2018 received a copy of letter from Appellant to Collis Adams. 8/23/18 issued letter giving Appellant 30 days to file a revised appeal. Discussion was held.

Docket No. 18-03 WtC – New Castle Conservation Commission Appeal

Subject: 1/16/18 approval of Wetlands Permit No. 2017-00487 issued to Marion Clough

Hearing Officer: May 14, 2018 David Conley was appointed by AG.

Status: February 15, 2018 received Notice of Appeal. 2/20/18 issued Insufficient Appeal letter. March 21, 2018 received revised Petition for Appeal. 3/22/18 issued receipt of revised Appeal letter. April 10, 2018 received Appearance of Jonathan Springer for the permittee and a Motion for Summary Dismissal. 4/13/18 received Appearance of Nathaniel Morse for the appellant. 4/16/18 received Appellant's Objection to Motion for Summary Dismissal. Council accepted Appeal May 8, 2018. 5/11/18 issued Ruling on Acceptance of Appeal and Motion to Summarily Dismiss. 5/22/18 issued notice of Pre-hearing Conference scheduled for June 13, 2018 at 3 p.m. June 13, 2018 issued Pre-hearing Order scheduling hearing for January 8, 2019 at 9 a.m.

Docket No. 18-05 WtC – David and Beth Boucher, Trustees Appeal

Subject: 2/15/18 Administrative Order No. 18-004 WD

Hearing Officer: May 14, 2018 David Conley was appointed by AG.

Status: February 26, 2018 received Petition for Appeal and issued Insufficient Appeal letter. March 22, 2018 received Revised Petition for Appeal. 3/26/18 issued receipt of revised Appeal letter. Council accepted Appeal May 8, 2018. 5/11/18 issued Appeal accepted letter. 5/22/18 issued notice of Pre-hearing Conference scheduled for June 13, 2018 at 1 p.m. 5/22/18 received Appearance of Joshua Harrison for the department. 5/31/18 received insufficiently filed Motion to Extend Pre-hearing Conference. 6/4/18 issued letter denying Motion to Extend PHC. June 13, 2018 issued Pre-hearing Order scheduling hearing for October 9, 2018 at 9 a.m. September 7, 2018 received Appellant's Witness an Exhibit List. 9/10/18 received State's Motion to Strike Exhibit and State's Witness and Exhibit List.

Docket No. 18-07 WtC – Kreisler Family II, LLC Appeal

Subject: 3/7/18 Approval of Wetlands Permit #2017-03657 issued to David Brewster

Hearing Officer: 8/16/18 requested Hearing Officer be assigned.

Status: April 4, 2018 received Preliminary Notice of Appeal and offer to enter into settlement discussions. May 16, 2018 received Petition for Appeal. 5/17/18 issued Insufficient Appeal letter. June 13, 2018 received Revised Petition for Appeal. 6/26/18 received Appearance of Stephen Nix for the Permittee. July 3, 2018 received Motion to Summarily Dismiss. 7/9/2018 received Appellant's Objection to Motion to Summarily Dismiss. Council accepted Appeal at August 14, 2018 meeting. 8/16/18 issued Ruling granting Acceptance of Appeal and denying Motion to Summarily Dismiss.

Docket No. 18-08 WtC – Kreisler Family II, LLC Appeal

Subject: 3/7/18 Approval of Wetlands Permit #2017-03659 issued to David Brewster

Hearing Officer: 8/16/18 requested Hearing Officer be assigned.

Status: April 4, 2018 received Preliminary Notice of Appeal and offer to enter into settlement discussions. May 16, 2018 received Petition for Appeal. 5/17/18 issued Insufficient Appeal letter. June 13, 2018 received Revised Petition for Appeal. 6/26/18 received Appearance of Stephen Nix for the Permittee. July 3, 2018 received Motion to Summarily Dismiss. 7/9/2018 received Appellant's Objection to Motion to Summarily Dismiss. Council accepted Appeal at August 14, 2018 meeting. 8/16/18 issued Ruling granting Acceptance of Appeal and denying Motion to Summarily Dismiss.

IV. Inactive/Status Letter or Pending Settlement/Withdrawal

V. Misc.

5. New Business

A. Assistant Commissioner Freise

3 items discussed:

1. Chairman Kimball noted the auditor understood the terms 'consult with' and 'advise' differently and there is a need to be on similar page as to what the Wetlands Council is to do.

Assistant Commissioner Freise then shared the department's views. The administrative SOP is being worked on for support for the Council.

2. Chairman Kimball addressed session/chapter laws and how to handle so that the Council and the department are dealing with current statutes.

Assistant Commissioner Freise noted we need clear understanding of legal support.

3. HB 1104 that is unclear as how the appeals processes work. How is this problem solved?

Assistant Commissioner Freise said there is a need to get legal opinion. Chairman Kimball will send a letter to Commissioner Scott.

6. Old Business

B. Mary Ann Tilton, Assistant Wetlands Bureau Administrator, gave an update on the Wetlands Rules as they are going forward in rulemaking. The Council held a lengthy discussion, adding their comments.

7. Next Meeting –

The next meeting is October 9, 2018 at 8 a.m. with Docket No.18-05 WtC – David and Beth Boucher, Trustees Appeal hearing at 9 a.m.

8. Adjournment

- ***Councilor Lievens made a motion to adjourn, second by Councilor Gove. Motion passed unanimously.***

Meeting ended at 12:44 p.m.